

# **THE SAN BERNARDINO COUNTY**

## **401(k)**

### **SALARY SAVINGS PLAN**

The San Bernardino County 401(k) Salary Savings Plan became effective January 1, 1984 and constitutes a defined contribution, profit sharing plan (qualified under the applicable portions of Section 401(a) and 401(k) of the Internal Revenue Code) for the exclusive benefit of eligible employees and their beneficiaries.

The present document represents a restatement in its entirety of the Plan provisions, effective October 1, 2002.

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## **ARTICLE I**

### **DEFINITIONS**

Where the following words and phrases appear in the Plan, they have the respective meanings set forth below, unless the context in which they are used clearly indicates a different meaning.

**1.01 Account**

Account shall mean the separate accounts that the Salary Savings Plan Committee shall maintain to record the interest of a Participant in the Plan. Such Accounts may include the Compensation Reduction Contributions Account, the Employer Matching Contributions Account, the Employer Non-Elective Contributions Account, the Employee Voluntary Account, and the Employee Rollover Account.

**1.02 Anniversary Date**

Anniversary Date shall mean each January 1 after the Effective Date.

**1.03 Annual Additions**

Annual Additions means, for any Plan Year, the sum of: (1) all Contributions made on behalf of a Participant in accordance with Article III of this Plan; (2) the forfeitures allocated to such Participant; (3) the post-tax voluntary contributions, if applicable; (4) amounts credited to an individual medical account, as defined in Section 415(1)(2) of the Internal Revenue Code, which is part of a defined benefit plan maintained by the Employer, and (5) amounts attributable to post-retirement medical benefits to a key employee, as required by Code Section 419A(d)(2)

**1.04 Base Salary**

For Eligible Employees paid on an hourly basis, Base Salary for each Pay Period shall be equal to the number of hours regularly scheduled to work for that Pay Period times hourly rate of pay. An exception to this definition shall be made for hours paid for Short-Term Disability (STD). STD hours shall only be included in the computation of Base Salary for each Pay Period if the Participant has elected to fully integrate STD with paid leave and/or regular time for that Pay Period. Base Salary shall not include payment for overtime, or payments made through the County's Medical Emergency Leave or Workers' Compensation Programs. For Eligible Employees who are elected officials paid on a daily basis, Base Salary for each Pay Period is equal to the number of days paid during that Pay Period times daily rate of pay.

**1.05 Beneficiary**

Beneficiary shall mean the person or persons designated to receive benefits payable under the Plan in the event of a Participant's death. In the absence of such a designation, or if no designated person is living when a benefit is payable, the Beneficiary shall be designated in the following order of priority:

- (a) Spouse
- (b) Children
- (c) The estate of the Participant.

In the event any amount is payable under the Plan to a person for whom a conservator has been legally appointed, the payment shall be distributed to the duly appointed and currently acting conservator, without any duty on the part of the Salary Savings Plan Committee to supervise or inquire into the application of any funds so paid.

1.06 Code

The Code shall mean the Internal Revenue Code of 1986, as amended.

1.07 Compensation Reduction Contribution

Compensation Reduction Contribution shall mean an employer contribution made on behalf of a Participant pursuant to a Compensation Reduction Election in accordance with Section 3.01 of this Plan.

1.08 Compensation Reduction Contributions Account

Compensation Reduction Contributions Account shall mean an account maintained for each Participant to reflect allocations of Compensation Reduction Contributions, and Investment earnings, gains and losses thereon.

1.09 Compensation Reduction Election

Compensation Reduction Election shall mean an agreement pursuant to Section 3.01 of this Plan by which a participant agrees to reduce his Compensation by a given percentage or flat dollar amount, and the Employer agrees to contribute to the Plan the amount of the reduction as a Compensation Reduction Contribution.

1.10 Contributions

Contributions shall include Compensation Reduction Contributions and Employer Matching Contributions. Contributions may also include Employer Non-Elective Contributions, Employee Voluntary Contributions, and Employee Rollover Contributions.

1.11 Controlled Group

Controlled Group shall mean the County and any other Employer with whom the County is required to be aggregated as a single employer under Code Section 414(b) or (c).

1.12 County

The County shall mean the County of San Bernardino.



1.13 Dependents

Dependents shall include a Participant's spouse and/or such other individuals whose relationship to the Participant meets the qualifications of a dependent as described in Code Section 152.

1.14 Effective Date

The Effective Date shall mean January 1, 1984.

1.15 Eligible Employee

Eligible Employee means an Employee who is:

- (a) In the Exempt occupational unit of the Employer, or
- (b) An elected official of the Employer, or
- (c) A contract employee of the Employer whose contract authorizes participation in the Plan, or
- (d) Any other Employee who is deemed an Eligible Employee by the County Board of Supervisors.

1.16 Employee

Employee shall mean any person who is employed by the Employer, but excludes any person who is employed as an independent contractor.

1.17 Employee Rollover Contribution

A Contribution that qualifies as a qualified rollover contribution from an eligible qualified retirement plan.

1.18 Employee Voluntary Contribution

A discretionary, after-tax Contribution by a Participant, not to exceed ten percent (10%) of his or her aggregate Compensation for all Plan Years since he or she became a Participant under the Plan, subject to the limitations described in Section 3.07 of this Plan.

1.19 Employer

Employer shall mean the County of San Bernardino, the Superior Courts of the County of San Bernardino; any Special District governed by the Board of Supervisors of the County, or any joint powers authority in which the County is a party that has adopted this Plan.

1.20 Employer Matching Contribution

An Employer Contribution made on the basis of two (2) times a Participant's Compensation Reduction Contributions up to three percent (3%) of a Participant's bi-weekly Base Salary, with a maximum matching Contribution of six percent (6%) of a Participant's bi-weekly Base Salary.

- 1.21 Employer Non-Elective Contribution  
An Employer Contribution that is made on a discretionary and allocated to a Participant in any manner approved by the Employer.
- 1.22 Employment Commencement Date  
Employment Commencement Date shall mean the date an Employee is first employed by the Employer.
- 1.23 Entry Date  
The Entry Date for an Eligible Employee shall be the first day of employment on which the Employee becomes an Eligible Employee or any day thereafter.
- 1.24 Investment Advisor  
Investment Advisor shall mean that person or organization designated by the Salary Savings Plan Committee to render investment advice and who is registered under the Investment Advisor's Act of 1940.
- 1.25 Investment Manager  
Investment Manager shall mean that person or organization designated by the Salary Savings Plan Committee to have the power to manage, acquire, or dispose of Plan assets, and who is registered as an investment advisor under the Investment Advisor's Act of 1940.
- 1.26 Investment Policy and Procedures Statement  
Investment Policy and Procedures Statement shall mean the adopted investment policy and administrative procedures by the Salary Savings Plan Committee identifying the risks associated with the plan by plan Participants, the procedures for determining investment selection, the monitoring of investment performance and procedures for replacing under performing funds.
- 1.27 Normal Retirement Age  
Normal Retirement Age means the age designated by the Participant within the range of ages ending with 70½ and beginning not earlier than the earliest age at which the Participant has the right to retire through the San Bernardino County Employees Retirement Association and receive retirement benefits without actuarial reduction. For a Participant who continues in the service of the Employer after age 70½, Normal Retirement Age shall mean the age at which the Participant separates from service with the Employer.
- 1.28 Participant  
Participant shall mean an Eligible Employee who commences participation in this Plan under the provisions of Article II herein, and whose employment or participation has not terminated. An employee who becomes a Participant shall remain a Participant under the Plan until the Trustee has fully distributed his accrued benefit to him.

- 1.29 Pay Period  
Pay Period shall mean the fourteen (14) day period for which the Employer issues pay warrants.
- 1.30 Plan  
The Plan shall mean the employee benefit plan set forth in this document and as amended hereafter, known as:  
"The San Bernardino County 401(k) Salary Savings Plan."
- 1.31 Plan Administrator  
The Plan Administrator shall mean the County's Human Resources Department, Employee Benefits and Services Division.
- 1.32 Plan Recordkeeper  
Plan Recordkeeper shall mean that individual or organization designated by the Salary Savings Plan Committee to maintain the records of the Plan.
- 1.33 Plan Year  
The Plan Year shall commence at 12:00 a.m. on January 1 of each year and end at 11:59 p.m. on December 31 each year. The Plan Year shall be the year used for purposes of the limitations on contributions and benefits imposed by Code Section 415.
- 1.34 Salary Savings Plan Committee  
The Salary Savings Plan Committee shall mean the Committee appointed by the County in conformance with Section 11.01.
- 1.35 Trust  
Trust shall mean the legal entity created by this Trust Agreement as part of the Plan.
- 1.36 Trustee  
Trustee shall mean an individual or individuals or institutional corporate trustee designated by the Salary Savings Plan Committee to safeguard the Trust assets and to carry out the directions of the Salary Savings Plan Committee.
- 1.37 Trust Fund  
Trust Fund shall mean all property of every kind held or acquired by the Trustee under this Agreement.
- 1.38 Valuation Date  
Valuation Date shall mean the last day of the Plan Year ending December 31.

## **ARTICLE II**

### **PARTICIPATION**

#### **2.01 Election to Participate**

Each Eligible Employee may elect to become a Participant on his or her Entry Date or thereafter by making a Compensation Reduction Election on forms approved by the County and provided by the County or Plan Recordkeeper.

#### **2.02 Continuation of Participation**

A person will continue to be a Participant for as long as an Account is maintained for him in accordance with Section 4.01 below. A Participant who ceases to be an Eligible Employee, as defined in Section 1.16 above, but who remains employed by the Employer, will remain a Participant, but will no longer be eligible for Compensation Reduction Contributions or for a new Participant loan.

## **ARTICLE III**

### **CONTRIBUTIONS**

#### **3.01 Compensation Reduction Contributions**

Each Participant may elect a flat dollar amount or a percentage of reduction in Compensation to be effective each Pay Period. The amount of the reduction from each Pay Period will be contributed to the Plan on the Participant's behalf by the County on or about the date payroll warrants are next issued for that period. This election will be referred to as a Compensation Reduction Election, and such contributions will be referred to as Compensation Reduction Contributions. Irrespective of the Compensation Reduction Election, the reduction of compensation shall not affect the calculation of base salary for purposes of computing other benefits such as retirement, contributions to the deferred compensation plan, overtime compensation and Social Security.

No Participant shall be permitted to have Compensation Reduction Contributions made under the Plan or any other qualified plan of the Employer during the taxable year, in excess of the dollar limitation contained in Code Section 402(g) in effect at the beginning of such taxable year.

Compensation Reduction Elections will be made on an appropriate form supplied by the Plan Administrator. The Salary Savings Plan Committee may establish such rules as it deems appropriate concerning the administration of Compensation Reduction Elections, including requiring reasonable notification periods.

#### **3.02 Employer Matching Contributions**

Bi-weekly contributions of Eligible Participants in the Plan may be matched by an Employer contribution on the basis of two (2) times a Participant's Compensation Reduction Contribution up to three percent (3%) of a Participant's bi-weekly Base Salary with a maximum matching contribution of six percent of a Participant's bi-weekly Base Salary. The sum of the Employer Matching Contribution and the

Participant's Compensation Reduction Contribution shall not exceed the maximum amount set forth in Code Section 415. Employer Matching Contributions shall not be computed on the basis of any Employee Voluntary Contributions made by a Participant.

3.03 Employer Non-Elective Contributions

The Employer may contribute such additional amounts to the Trust, as it shall determine for any Plan Year. Providing a Participant is contributing on a bi-weekly basis, the Employer shall allocate such contributions in proportion to the Participant's Base Salary during the payroll period or under any other method as determined by the Employer.

3.04 Employee Voluntary Contributions

Participants in the Plan shall have the right to make voluntary after-tax contributions. In no event at any point in time may the Participant have contributed more than the Code Section 415(d) limit, reduced by voluntary contributions or Employer Contributions to any other qualified plan of the Employer for the same Plan Years. Employee Voluntary Contributions shall not be eligible for Employer Matching Contributions.

3.05 Employee Rollover Contribution

Any Participant may contribute cash to the Trust if the contribution is an "eligible qualified rollover contribution," which the Code permits an employee to rollover from one qualified asset or eligible plan to another qualified asset or eligible plan. Before accepting a rollover contribution, the Trustee may require an Employee to furnish satisfactory evidence that the proposed transfer is in fact a "qualified rollover contribution." A separate Account may be maintained with respect to a Participant's rollover contribution.

3.06 Additional Elective Deferrals for Participants Age 50 and Over

All Participants who have attained age 50 and over during the calendar year shall be eligible to contribute an additional amount into the plan subject to the annual additional maximum amount as defined by Code Section 414(v).

3.07 Limitations on Annual Additions

Notwithstanding any other Plan provisions, the Annual Additions to each Participant's Account for any Plan Year will not exceed the least of the following:

- (a) \$40,000, adjusted to take into account any cost-of-living increase adjustments provided for the Plan Year under Code Section 415(d), or
- (b) 100% of the Participant's net pay for the Plan Year.

3.08 Effect of Limitations of Annual Additions

If the Contributions for a Participant are to be reduced pursuant to the provisions of Section 3.07 above, they will be reduced in the following order:

- (a) Employee Voluntary Contributions
- (b) Employer Non-Elective Contributions
- (c) Employer Matching Contributions
- (d) Compensation Reduction Contributions

Amounts that cannot be allocated to a Participant's Account because of the limitations provided in Section 3.07 will be placed in a suspense account and allocated to his Account in the following Plan Year, except that post-tax Employee Voluntary Contributions shall be returned to the Participant. The Salary Savings Plan Committee may establish such other rules and take such other action as is necessary to comply with the provisions of Code Section 415.

### 3.09 Combined Plan Limitations

Effective for Plan Years beginning after December 31, 1999, the combined plan limitations as contained in Code Section 415(e) are repealed. For Plan Years before then, if a Participant is covered under any United States tax-qualified defined contribution retirement plan maintained by the Controlled Group, the limitation on Annual Additions shall be applied to Annual Additions in the aggregate to this Plan and such other plans. Reduction of Annual Additions, where required, shall be accomplished by reducing contributions under such other plans pursuant to the directions of the Plan Administrator of such other plans or under priorities, if any, established by the terms of such other plans, and then, if necessary, by reducing contributions under this Plan.

If any case where a Participant under this Plan is also a Participant under the United States tax-qualified defined benefit plan (or a defined benefit plan and other defined contribution plans) maintained by the Controlled Group, the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction, as defined below, shall not exceed 1.0. Reduction of contributions to or benefits from all plans, where required, shall be accomplished by first reducing benefits under such other Defined Benefit Plan or plans, then by allocating any excess in the manner set out above with respect to this Plan, and finally by reducing contributions or allocating any excess contributions with respect to other Defined Contribution Plans, if any; provided, however, that adjustments necessary under this or the next preceding paragraph may be made in a different manner and priority pursuant to the agreement of the Salary Savings Plan Committee and the administrators of all other plans covering such Participant, provided such adjustments are consistent with procedures and priorities prescribed by Treasury Regulations under Code Section 415.

"Defined Benefit Plan Fraction" shall mean a fraction, the numerator of which is the projected annual benefit (determined as of the close of the relevant Plan Year) of the Participant under all Defined Benefit Plans maintained by the Controlled Group, and the denominator of which is the lesser of (i) the product of 1.25 multiplied by the dollar limitation in effect under Section 415(b)(1)(A) of the Code of the Plan

Year, or (ii) the product of 1.4 multiplied by the amount which may be taken into account under Section 415(b)(1)(B) of the Code with respect to the Participant for the Plan Year.

"Defined Contribution Plan Fraction" shall mean a fraction, the numerator of which is the sum of the annual additions to a Participant's accounts under all Defined Contribution Plans maintained by the Controlled Group, and the denominator of which is the sum of the lesser of (i) or (ii) for such Plan Year and for each prior Plan Year of Service with the Controlled Group, where (i) is the product of 1.25 multiplied by the dollar limitation in effect under Code Section 415(c)(1)(A) for the Plan Year (determined without regard to Code Section 415(c)(6)), and (ii) is the product of 1.4 multiplied by the amount which may be taken into account under Code Section 415(c)(1)(B) (or Code Section 415(c)(7), if applicable) with respect to the Participant for the Plan Year. Notwithstanding the foregoing, the numerator of the Defined Contribution Plan Fraction shall be adjusted pursuant to Treasury Regulations 1.415-7(d)(1) and Questions T-6 and T-7 of the Internal Revenue Service Notice 83-10.

**3.10 Military Service**

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

## **ARTICLE IV** **RECORDKEEPING**

**4.01 Maintenance of Records**

The Plan Recordkeeper will establish and maintain separate records of each Participant's Compensation Reduction Contributions Account, Employer Matching Contribution Account, Employer Non-Elective Contributions Account, Employee Voluntary Contributions Account, Employee Rollover Contribution Account, and one or more investment accounts within said Accounts.

**4.02 Valuation of Accounts**

The Plan Administrator shall determine the frequency of the determination of the current market value of the Accounts in the Plan, but no less frequently than annually. The Plan Administrator may require the Plan Recordkeeper to make such valuation on a daily basis. As of each such valuation, all investment income and capital gains and losses (both realized and unrealized), which have occurred since the preceding valuation, shall be proportionately allocated in an equitable manner among the Participant's Accounts. In the event more than one pooled investment fund is being utilized, such allocation shall be performed separately with respect to each such investment fund. All contributions by or for the Participant, less any distributions and expense charges, shall also be credited to his Accounts.

4.03 Allocation of Contributions

The contributions made by the Employer on behalf of the Participants shall be allocated to the Participants' Accounts as soon as administratively feasible following the completed processing of each Payroll Period.

4.04 Determinations and Adjustments Binding on Participants

The Trustee's and/or the Plan Recordkeeper's determination of the value of the Trust Fund and adjustments made or caused to have been made by the Plan Recordkeeper and/or the Plan Administrator to all Accounts will be conclusive and binding on all Participants.

## **ARTICLE V**

### **BENEFITS AND DISTRIBUTIONS**

5.01 Vesting of Benefits

A Participant's Accounts in the Plan shall be fully vested and non-forfeitable at all times. Such Accounts shall be distributed as provided in this Article V.

5.02 Benefit Payments

Payment of benefits under any of the provisions of this Plan shall be made by the Trustee in accordance with the directions of the Salary Savings Plan Committee as to method, commencement date, amounts and payees. However, unless the Participant elects otherwise in writing fully describing the benefits and commencement date, benefits shall commence no later than the 60th day after the close of the Plan Year in which the latest of the following events occurs:

- (a) The Participant attains the earlier of Normal Retirement Age and has separated from County service or
- (b) The Participant attains age 70½, or
- (c) The fifth anniversary of the year in which the Participant commenced participation in the Plan, or
- (d) The Participant terminates service with the Employer.

In lieu of or as part of any of the benefits herein provided, the Salary Savings Plan Committee may instruct the Trustee at any time to purchase or acquire by conversion rights, from an insurance company, immediate or deferred, level or variable, individual or group annuity contracts which provide benefits substantially equivalent to the benefits herein provided. Such contracts or individual certificates may either be held by the Trustee as owner, or if directed by the Salary Savings Plan Committee, shall be transferred to the Participant or his beneficiary, subject to an endorsement making them nontransferable except to the company which issued them, in complete satisfaction of their equivalent benefits hereinabove provided and in full discharge of all liability of the Employer and Trustee hereunder.



5.03 Distribution Limitations

Employer Matching Contributions, Compensation Reduction Contributions, and Employer Non-Elective Contributions as defined in Article III above are not distributable earlier than upon one of the following events:

- (a) The Participant has reached his Normal Retirement Age and has separated from County services; or
- (b) The Participant has attained age 59-1/2; or
- (c) The Participant has separated from service; or
- (d) The participant has died or become disabled as defined by the County Employer Retirement Law of 1937, or
- (e) The Participant has a financial hardship, as defined in Article VII; or
- (f) The Plan has been served with a court-approved domestic relations order determined acceptable by the Plan Administrator.

5.04 Form of Benefit Payment

- (a) Benefits shall be paid in one of the following ways as selected by the Salary Savings Plan Committee:
  - (i) by a lump sum payment. This will be the automatic form of payment if the value of the Participant's Account is less than \$5,000 or a lower amount as determined by the Salary Savings Plan Committee.
  - (ii) by segregation of the account from the remainder of the fund, investment in highly liquid, low-risk, interest-bearing deposits or securities and payment of principal and earnings in installments fixed by the Salary Savings Plan Committee subject to (b) below.
  - (iii) by continuation of the account in the Trust with adjustments for periodic valuations and payment in installments fixed by the Salary Savings Plan Committee subject to (b) below.
- (b) If payment is by installments, the following shall apply:
  - (i) The recipient or the Salary Savings Plan Committee may elect whether to have the account segregated under (a)(iii) above as of any Valuation Date by notice under rules prescribed by the Salary Savings Plan Committee.
  - (ii) Installments shall normally be substantially equal over the period of payout. Variations may occur because of redetermination of the Participant and spouse's life expectancy under 5.05 or changes in

the account balances because of trust investment results. The installment sizes may also be changed by the recipient subject to Section 5.05(b) below, and rules of the Salary Savings Plan Committee.

- (iii) Installments in any year shall not be less than an amount determined by dividing the account balances by the joint and last survivor life expectancy of the Participant and designated beneficiary as of the first of the year, starting with the year in which payments begin.

#### 5.05 Limitation on Form of Benefit

- a. Subject to (b) of this Section, benefits may be paid over a period not longer than the life expectancy of the Participant and of the designated beneficiary, if any.
- b. The Salary Savings Plan Committee shall coordinate with plan provider(s) to determine minimum installment sizes. The plan will utilize life expectancies as of the benefit starting date using actuarial assumptions acceptable to the Treasury Department. The life expectancy of a Participant or spouse may be recalculated annually.
- c. The present value of payments to be made to the Participant must be over 50 percent (50%) of the value of the total benefit as of the end of the Plan Year in which the Participant retires or reaches age 65, whichever is later.
- d. Distributions to each Participant shall be made not later than such Participant's "required beginning date" as determined in accordance with Code Section 401(a)(9)(A)(B) and (C) and regulations thereunder. If distributions to a Participant have begun and the Participant dies before his entire interest has been distributed to him, the remaining portion shall be distributed to his beneficiary at least as rapidly as under the distribution method being utilized on the date of his death.

## **ARTICLE VI** **INVESTMENT FUNDS**

#### 6.01 Fund Investment Options

Participants will be permitted to invest Contributions made on their behalf in any combination of the funds selected for this Plan by the Salary Savings Plan Committee.

The Salary Savings Plan Committee will establish or change investment funds or cease to accept further investments in previously approved investment funds, as it deems appropriate, in its sole discretion. All contributions on behalf of Participants who make no election will be invested in the fund designated by the Salary Savings Plan Committee.

The Salary Savings Plan Committee may establish rules and regulations for the administration of investments and the exercise of investment options under the Plan in accordance with the currently in force Investment Policy and Procedures Statement.

6.02 Change in Investment of Future Contributions

The Salary Savings Plan Committee shall determine the frequency that Participants may change their investment elections, but, in any event, no less frequently than quarterly. Such changes shall be made by request with the Plan Recordkeeper in such manner as may be prescribed and in accordance with such rules as the Plan Recordkeeper may direct.

6.03 Change in Investment of Existing Account

As of any Valuation Date or any other date as specified by the Salary Savings Plan Committee, a Participant may change the manner in which his existing Account is invested. Any election will be in whole percentages and will be made by a request to the Plan Recordkeeper in accordance with such rules as the Plan Recordkeeper may direct.

6.04 Participant Exercise of Control

In the case of any Participant who exercises control over the assets in his Account, no other person shall be liable for any loss that results from the Participant's exercise of control.

## **ARTICLE VII**

### **HARDSHIP WITHDRAWALS**

7.01 Eligibility

Participants who have incurred a hardship, within the meaning of Code Section 401(k) and its regulations, may elect to withdraw all or any portion of their Vested Accounts, not invested in loans, in accordance with this Article VII. For purposes of this Article, a distribution is on account of hardship only if the distribution is made both on account of an immediate and heavy financial need of the Participant and is necessary to satisfy such financial need. A distribution will be deemed to be made on account of an immediate and heavy financial need of the Participant if the distribution is on account of:

- (a) Uninsured medical expenses described in Code Section 213(d) previously incurred by the Participant, the Participant's spouse, or any dependents of the Participant (as defined in Code Section 152), or necessary for these persons to obtain medical care described in Code Section 213(d);
- (b) Purchase (excluding mortgage payments) of a principal residence of the Participant;

- (c) Payment of tuition and related educational fees for the next 12 months of post-secondary education for the Participant, his or her spouse, children, or dependents;
- (d) The need to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of the Participant's principal residence; or
- (e) Such other deemed immediate and heavy financial needs as may be announced by the Internal Revenue Service through the publication of revenue rulings, notices, and other documents of general applicability, and which are adopted by the Salary Savings Plan Committee as a permissible reason for a hardship distribution.

A distribution will not be treated as necessary to satisfy an immediate and heavy financial need of a Participant to the extent the amount of the distribution is in excess of the amount required to relieve the financial need or to the extent such need may be satisfied from other resources that are reasonably available to the Participant.

For purposes of this Section, the Participant's resources shall be deemed to include those assets of his or her spouse and minor children that are reasonably available to the Participant. However, property held for the Participant's child under an irrevocable trust or under the Uniform Gifts to Minors Act will not be treated as a resource of the Employee.

In the event that the Participant requests a hardship distribution, he or she will not be eligible to make contributions to the 401(k) Plan and all other qualified and nonqualified plans of the County or other Employer, except contributions to health and welfare plans, for six (6) months after requesting the hardship distribution regardless of whether the distribution is approved or denied. In addition, the Participant may not make Compensation Reduction Contributions for the Participant's taxable year immediately following the taxable year of the hardship distribution in excess of the applicable limit under Code Section 401(g) for such next taxable year less the amount of such Participant's Compensation Reduction Contributions for the taxable year of the hardship distribution. A committee established by the Plan Administrator shall determine if a Participant's circumstances constitute a hardship as set forth herein. The decision of the committee may be appealed directly to the Plan Administrator, whose determination shall be final and binding.

No distribution will be permitted under any other circumstances except as specified in Articles V and VII of this Plan.

Distributions made pursuant to this Article VII may be "grossed up" to include federal and state income taxes and penalties, as applicable.

7.02 Payment of Withdrawals

A hardship withdrawal election must be made on the appropriate form filed with the Plan Administrator. Payment of withdrawals will be made as soon as administratively feasible following approval of the hardship by the Plan Administrator or its designee. Withdrawals will reduce the Participant's Account as of the date of withdrawal.

7.03 Reduction of Accounts

Withdrawals reduce the portion of a Participant's Account not invested in loans in accordance with Article VIII, in the order specified by the Participant, pursuant to rules established by the Salary Savings Plan Committee.

Within each Account, withdrawals will be taken from amounts of all funds in which the Participant is invested on a prorated basis, or as the Participant otherwise specifies, pursuant to rules established by the Plan Administrator.

## **ARTICLE VIII**

### **LOANS**

8.01 Participant Loans

A Participant for whom a Compensation Reduction Election has been in effect for at least twelve (12) full months, may, with the approval of the Plan Administrator, elect to borrow a portion of his or her Account. The Rules and Regulations of the Loan Program are attached as Appendix A.

## **ARTICLE IX**

### **DIRECT ROLLOVER OR TRANSFER OPTION**

9.01 Transfers In

The full or partial value of a Participant's account may be accepted from another eligible plan including 401(a), 401(k), 403(b), 457 or an Individual Retirement Account (IRA), pursuant to Code Section 457(e)(16) and revised Section 402(c)(8)(B) maintained by another employer and credited to the Participant's Account under this Plan, if:

- (a) The Participant has separated from service with that employer and has become the County's Employee.
- (b) The other employer's plan provides that such transfer can be made.
- (c) As it deems necessary, the County may require from the Employee such documentation from the predecessor plan to perfect the transfer, to confirm that such plan is an eligible plan within the meaning of Code Sections 401(a), 401(k), 403(b), 457, or 408 [IRA], to assure that transfers are provided for under such plan. The County may refuse to accept a transfer

in the form of assets other than cash unless the County agrees to hold such other assets under the Plan. Any amounts transferred that had been deferred during prior calendar years will not be subject to current calendar year deferral limitations.

- (d) Any amounts transferred from a 401(a), 401(k), 403(b) or 408 [IRA] may be separately accounted for.

Any amounts transferred from a 401(a), 401(k), 403(b), 457 or 408 [IRA] may be subject to the 10% distribution penalty tax if distributed from this Plan prior to age 59½.

#### 9.02 Transfers Out

The full or partial value of a Participant's Account may be transferred to another Eligible Retirement Plan maintained by another employer, if:

- (a) The Participant has separated from service with the County and become an employee of the other employer;
- (b) The other employer's plan provides that such transfer will be accepted; and
- (c) The Participant and the County have signed such agreements as are necessary to assure that the County's liability to pay benefits to the Participant has been discharged and assumed by the other employer.
- (d) As it deems necessary, the County may require such documentation from the other plan to complete the transfer, to confirm that such plan is an eligible plan within the meaning of Code Section 457, and to assure that transfers are provided for under the other plan. Such transfers shall be made only under such circumstances as are permitted under Code Section 457 and the applicable regulations.

The full or partial value of a Participant's Account may also be transferred to an IRA once the Participant has experienced Termination of Employment.

#### 9.03 In-Service Transfers for Purchase of Defined Benefit Service Credits

The Participant may request a transfer of all or a portion of his or her Account to any qualified retirement plan that will accept direct transfers from the Plan for the purpose of purchasing eligible prior retirement service credit. The amount so transferred shall not exceed the amount to be used for such purpose.

A transfer of funds for this purpose must be made on the appropriate form(s) filed with the Plan Administrator. The Plan Administrator will make the transfer as soon as administratively feasible following approval of the transfer.

The Plan Administrator may establish rules for administration of this section. Section 7.03 of this Plan shall apply in determining the Fund(s) from which the transfer shall be made.

## **ARTICLE X**

### **TRUSTEE**

#### **10.01 Duty of Trustee**

The Salary Savings Plan Committee shall designate the Trustee. The Salary Savings Plan Committee may be the Trustee. The duties of the Trustee shall be confined to safeguarding the Trust assets and carrying out the directions of the Salary Savings Plan Committee. The Trustee shall assume such level of investment responsibility as the Salary Savings Plan Committee may direct. The directions of the Salary Savings Plan Committee to the Trustee may be verbal unless the Trustee requests a written confirmation. The Trustee shall be fully protected in acting upon any authorization or direction given to him in the form provided herein and believed by it to be genuine. The Trustee shall discharge the duties under this Plan solely in the interest of the Participants and for the exclusive purpose of providing benefits to such persons and defraying reasonable expenses of administering the Trust, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and by diversifying the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, all in accordance with the provisions of this Plan. The duties and obligations of the Trustee as such shall be limited to those expressly imposed upon it by this Plan, it being hereby expressly agreed that the Trustee is not a party to the Plan.

#### **10.02 Powers of Trustee**

- (a) In the discharge of its duties as described herein, the Trustee shall have all powers necessary to hold in trust and administer the Trust Fund as contemplated hereby, including, but not limited to the power:
  - (i) To receive the income of the Trust fund;
  - (ii) To pay the expenses of the Trust (including any taxes) out of the Trust Fund, including reasonable compensation for its services as Trustee (if and to the extent that the Employer does not pay such expenses and compensation);
  - (iii) To employ suitable agents and counsel and pay their reasonable expenses and compensation out of the Trust Fund (if and to the extent that the Employer does not pay such expenses and compensation);

- (iv) To manage, control, sell, convey, exchange, partition, divide, subdivide, improve and repair; to grant options and to sell upon deferred payment; to lease for terms within or extending beyond the duration of this Trust, for any purpose, including exploration for removal of gas or other minerals, to enter into community oil leases; to create restrictions, easements and other servitudes; to compromise and defend action and proceedings; to carry such insurance for the protection of the Trust estate as the Trustee may deem advisable;
- (v) To invest and reinvest, without distinction between principal and income, any money at any time held in trust hereunder in any securities, including common and preferred stocks, bonds, put and call options (including the granting of option to purchase and sell securities), interest in limited partnerships whose purpose is investing and reinvesting in securities or property, or in any other property, real or personal, tangible or intangible, including real estate loans and common trust funds established by the Trustee or other institutional Trustees and to retain as part of the Trust Fund any securities or other property received or acquired by it, irrespective of whether or not such securities or other property are approved by law as investments for trust funds;
- (vi) To hold uninvested any cash contributions to the Trust fund and to create reserves of cash or other assets of the Trust Fund, without liability for interest thereon, for the payment of expenses, or for distribution pursuant to the Plan, or for any other purpose in connection with the Plan;
- (vii) To deposit any monies at any time held in the Trust Fund in any savings bank or in the savings department of any bank or Trust company including, where applicable, the savings department of the Trustee;
- (viii) To borrow money, including purchasing stock on margin, and to secure the same by mortgage, deed of trust, or pledge of the Trust Fund, or any asset constituting a part thereof, and to pay and discharge any and all indebtedness of the Trust or any liens or other charges against the Trust Fund;
- (ix) To borrow the cash values of annuity or insurance contracts held in the Trust Fund. The Trustee may invest such borrowed funds in any security or other property including premiums for the same or other insurance or annuity contracts held by or applied for by the Trustee for purposes of the Plan. The Trustee's power hereunder shall be exercised only as directed by the Salary Savings Plan Committee.
- (x) To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust Fund; to commence to



defend legal proceedings for or against the Trust; and to represent the Trust in all proceedings in any court of law or equity or before any other body or tribunal. The Trustee shall not exercise any of the powers conferred upon it by this Section 10.02 without first giving notice of the action proposed to be taken to the Salary Savings Plan Committee and obtaining written approval of such action from the Salary Savings Plan Committee.

10.03 Liability of Trustee

The Trustee shall not be liable or accountable in any manner to the Salary Savings Plan Committee or any person for or by reason of any action taken or omitted by it under the instruction of the Salary Savings Plan Committee, or on the basis of any facts certified to it by the Salary Savings Plan Committee; nor for or by reason of its omission to act in the absence of instructions to the Trustees as herein provided for, the Trustee may, but shall not be required to, act without such instructions, as in its discretion seems appropriate and advisable under the circumstances, for the carrying out of the purpose of this Agreement. The Trustee may employ agents and consult with legal counsel (who may or may not be counsel to the Employer) concerning the duties hereunder.

10.04 Retention of Assets Pending Settlement of Dispute

In the event that a dispute arises as to the persons to whom payment and the deliver of any funds or property shall be made by the Trustee, it may retain or postpone such payment or delivery until actual adjudication of such dispute has been made in a court of competent jurisdiction or it shall have been indemnified against loss to its satisfaction.

10.05 Fees or Expenses

The Trustee's fees or expenses for its services as Trustee shall be such as may be mutually agreed upon by the Employer and such Trustee. Any Trustee who is an employee of the Employer shall serve without compensation, but shall be reimbursed by the Employer for all reasonable expenses incurred on behalf of the Plan.

10.06 Maintenance of Accounts and Records

The Trustee shall keep accurate and detailed records and accounts with respect to all assets included in the Trust Fund, and all investments, receipts and disbursements and other transactions involving the Trust, including individual and separate voluntary contribution accounts for individual employees participating in the Plan. All such accounts, books and records shall be open for inspection at all reasonable times by the Salary Savings Plan Committee or by any person or persons duly authorized by the Salary Savings Plan Committee or otherwise required by law. Within one hundred twenty (120) days following the close of each Plan Year of the Trust, the Trustees shall render to the Salary Savings Plan Committee accounts of its administration of the Trust during the period since the

last valuation date. An independent auditor shall at the same time submit a report on the financial statements and administrative procedures.

10.07 Valuation of Trust Fund

If the Trustee shall determine, in making any valuations under the terms of this Plan, that the Trust Fund, or any separately held account, consists in whole or in part of property not traded freely on a recognized market, or that information necessary to ascertain the fair market value thereof is not readily available, the Trustee may (but shall not be required to) request the Salary Savings Plan Committee for instructions as to the valuation to be placed on such property. The Salary Savings Plan Committee shall, with the assistance of someone competent in such matters, determine the value of such property and such determination shall be conclusive and binding for all Plan purposes. If the Salary Savings Plan Committee shall fail or refuse to instruct the Trustee as to the value of any such property within the time permitted the Trustee to make any required valuation, the Trustee may place fair and reasonable value upon such property and shall not be liable to any of the parties enumerated in the preceding sentence for loss or damage in so doing.

10.08 Resignation or Removal of Trustee

The Trustee may resign at any time by giving ninety (90) days written notice to the Salary Savings Plan Committee. The Salary Savings Plan Committee may remove the Trustee at any time upon thirty (30) days written notice or immediately if the Trustee has breached its responsibilities under the Plan. In case of resignation or removal of the Trustee, said Trustee shall have the right of a settlement of accounts, which may be made at the option of the Trustee either by judicial settlement in any action in a court of competent jurisdiction, or by agreement of settlement between the Trustee and the Employer.

10.09 Approval of Trustee's Account

The written approval of any Trustee account by the Employer or Salary Savings Plan Committee shall be final as to all matters and transactions stated or shown therein, and binding upon the Employer, Salary Savings Plan Committee, and all persons who then shall be or thereafter shall become interested in this Trust. Failure of the Employer or Salary Savings Plan Committee to notify the Trustee within ninety (90) days after receipt of any account of its disapproval of the account shall be the equivalent of written approval.

10.10 Appointment of Successor Trustee

Resignation or removal of the Trustee shall not terminate the Trust. In the event of vacancy in the Trusteeship of this Trust occurring at any time, the Salary Savings Plan Committee shall appoint a successor Trustee. Any such successor Trustee shall have all the powers and duties herein conferred upon the original Trustee. The title to all Trust property shall automatically vest in a successor Trustee without the execution or filing of any instrument or the doing of any act, but the resigning or removed Trustee shall, nevertheless execute all instruments and do all

acts which would otherwise be necessary to vest such title or record in any successor. The appointment of a successor Trustee may be effected by amendment to this Trust Agreement or by written action of the Employer without such amendment, the agreement of successor Trustee to act as such being evidenced by its execution of such amendment or of a copy of such resolution.

10.11 Payments to and Distributions from the Trust Fund

The Trustee shall from time to time, on the written direction of the Salary Savings Plan Committee, make payments out of the Trust Fund to such persons, in such manner, in such amounts, and for such purposes as may be specified in the written directions of the Salary Savings Plan Committee, and upon any such payment being made, the amount thereof shall no longer constitute a part of the Trust Fund.

Each such written direction shall be accompanied by a certificate of the Salary Savings Plan Committee that the payment is in accordance with the Plan, including but not limited to, benefit payments; reasonable expenses of the Plan and Trust; return of contributions made subject to qualification or made in error. The Trustee shall not be responsible in any way with respect to the application of such payments or the Trust Fund to meet and discharge any and all liabilities under the Plan. In the event that any dispute shall arise as to the identity or rights of persons entitled to benefits hereunder, the Trustee may withhold payment of benefits until such dispute shall have been determined by a court of competent jurisdiction or shall have been settled by written stipulation of the parties concerned.

## **ARTICLE XI**

### **ADMINISTRATION OF PLAN**

11.01 The Salary Savings Plan Committee

There shall be a Salary Savings Plan committee consisting of five or more members. The Salary Savings Plan Committee shall have complete authority to interpret, control, and manage the operation of this Plan in accordance with the provisions hereof. The Salary Savings Plan Committee members shall be appointed by and serve at the pleasure of the County Administrative Officer. The County Administrative Officer shall fill vacancies in the Salary Savings Plan Committee arising by resignation, death, and removal or otherwise. The Trustee shall be promptly notified of the original membership and any change in membership of the Salary Savings Plan Committee by the County Administrative officer and until so notified the Trustee may assume the membership continues without change. The elected County Auditor/Controller-Recorder shall serve as an ex-officio member of the Salary Savings Plan Committee.

The members of the Salary Savings Plan Committee must discharge their duties solely in the interest of the Participants and must adhere to the same standard of conduct as outlined in Section 10.01.

In accordance with County Policy #01-12, each Salary Savings Plan Committee member is covered under the County's self-insured, self-administered Worker's Compensation program if injured while performing authorized appointee tasks.

If the authorized action of a member, while serving on the Committee, results in a claim against the County or a lawsuit against the County or the appointee, the County will provide a defense and pay any/all settlements or judgements provided the claim arises out of the member's acts within the scope of his or her official duties, the member requests such representation, and the member cooperates in the defense of the action. Punitive or willful or intentional malice damages may not be covered by the County.

If, while driving a personal vehicle on appointed Salary Savings Plan Committee business, a member is involved in a vehicle accident, primary liability is to be provided by the member's personal vehicle liability insurance company.

**11.02 Power to Direct Investments**

The Salary Savings Plan Committee may, if it chooses, direct, either verbally or in writing, the acts of the Trustee in investing, reinvesting, disposing of or encumbering the principal and income of the Trust. If the Salary Savings Plan Committee does not choose to direct the Trustee in investing or reinvesting, the Salary Savings Plan Committee reserves the right in any case to be consulted by the Trustee with regard to any and all investments, reinvestments, dispositions of or encumbrances of the principal and income of the Trust. The Salary Savings Plan Committee shall give the Trustee additional or clarifying directions, if the Trustee requests.

**11.03 Investment Advisor or Managers**

The Salary Savings Plan Committee may hire one or more professional investment managers or advisors to direct the Trustee as to the investment of Plan assets.

**11.04 Separate Investments**

The Salary Savings Plan Committee may determine, in its discretion, that Participants shall be offered three (3) or more investment choices, such as, for example, a family of mutual funds. In such event, where applicable, a separate Account shall be maintained for each investment that a Participant has elected. The investment earnings and gains or losses, and any applicable expenses, shall be separately accounted for with respect to each investment fund.

The Salary Savings Plan Committee may also, in its discretion, permit individual Participants to direct the investment of a portion or all of their Accounts. No other person shall be liable for any loss due to the Participant's exercise of control.

**11.05 Power to Interpret and Administer Plan**

The Salary Savings Plan Committee shall determine all questions regarding interpretation, application and administration of the Plan, and its determination of

any questions shall be final. Without limiting the powers set forth above, the Salary Savings Plan Committee shall have the power: to construe the Plan; to determine all questions and make rules relating to the administration of the Plan and the eligibility of Employees; to authorize all disbursements by the Trustee from the Trust; to modify the investment program; to accept Voluntary Employee Contributions pursuant to Article V; and to compute and certify to the Trustee the benefits payable to Participants. The Plan Administrator shall assist the Salary Savings Plan Committee in the interpretation and administration of the Plan.

11.06 Employer Shall Supply Information

The Employer shall supply to the Salary Savings Plan Committee full and timely information on all matters relating to the compensation of the Participants, their employment, retirement, death, or other termination, and all such other pertinent facts as the Salary Savings Plan Committee may require. The Salary Savings Plan Committee shall furnish the Trustee such information as the Trustee may require in carrying out its duties under the Plan.

11.07 Compensation of Salary Savings Plan Committee Members and Plan Administrator

Each Salary Savings Plan Committee member shall serve without compensation for his services, but shall be reimbursed by the Employer for all reasonable expenses.

11.08 Plan Expenses

The County, the Salary Savings Plan Committee, and/or the Plan Administrator may hire outside administrators, advisors, or other persons to assist in the administration of the Plan. Resultant expenses and any other expenses of the Plan shall be paid either by the County or by the Plan, at the County's discretion. Expenses paid by the Plan may be allocated equitably over the Accounts of Participants.

## **ARTICLE XII**

### **INVESTMENT OF TRUST FUNDS**

12.01 Plan Establishes Trust Fund

The Plan establishes a Trust Fund consisting of such monies or other property as the Employer from time to time deposits with the Trustee.

The contributions of the Employer and Participants shall be deposited in the Trust Fund and shall be held, together with all other assets of the Plan, except insurance contracts and assets of any insurance company which has issued contracts under or holds assets of the Plan, shall be held in trust by one or more Trustees. The Salary Savings Plan Committee shall appoint the Trustee or Trustees. Upon acceptance, those being named or appointed as Trustee or Trustees shall have exclusive authority and discretion to manage and control the assets of the Plan, except to the extent that the Salary Savings Plan Committee or an outside investment manager or advisor shall properly direct the Trustee.

12.02 Trust Fund for Benefit of Participants

No person shall have the rights or interest in or to the Trust hereby created or the Trust Fund, or any part thereof, except as expressly provided herein. Notwithstanding any other provisions hereof, or any amendments hereof to the contrary, at no time shall the Trust Fund, or any part thereof, revert to or become the property of the Employer to be used for or diverted to purposes other than for the exclusive benefit of Participants and former Participants or their respective beneficiaries or estates, or for the administrative expenses of the Trust and the Plan, except as otherwise herein specifically provided.

12.03 Authorized Investments and Reinvestments

The Trustee accepts the Trust herein created and agrees to perform the obligations imposed by this Agreement.

The Trustee shall make investments and reinvestments (except as the Trustee may otherwise be directed by the Salary Savings Plan Committee).

**ARTICLE XIII**  
**AMENDMENT, TERMINATION**  
**OR DISCONTINUANCE OF CONTRIBUTIONS**

13.01 Right to Amend or Terminate the Plan

The County may amend the Plan, retroactively or otherwise, at any time. No such amendment may have the effect of vesting in the Employer any part of the Trust Fund, or of diverting any part of the Trust Fund for purposes other than for the exclusive benefit of Participants and beneficiaries. No amendment will deprive any Participant or beneficiary of any previously vested benefits.

Continuance of the Plan and payment of Plan Contributions are entirely voluntary and are not assumed as contractual obligations of the County or other Employer. The County reserves the right to terminate the Plan in whole or in part or to discontinue Plan Contributions at any time.

13.02 Distribution of Trust Fund upon Termination

If the Plan terminates or Plan Contributions discontinue completely, all Participants' Accounts will be fully vested and will be distributed to them in a manner determined by the Salary Savings Plan Committee, in its sole discretion.

**ARTICLE XIV**  
**MISCELLANEOUS PROVISIONS**

14.01 Contract of Employment

The Plan does not constitute a contract between any Employee and the Employer and is not a consideration or an inducement to any Employee for employment by the Employer. Nothing contained in the Plan gives any Employee the right to be

retained in the employ of the Employer or to interfere with the right of the Employer to discharge or to terminate the employment of an Employee at any time without regard to the effect of such action on Plan rights. No Participant or Beneficiary has any rights against the County or any other Employer for benefits payable under the Plan other than rights, if any, with respect to the Trust Fund.

#### 14.02 Furnishing of Information

Unless otherwise expressly provided in the Plan, all benefits to which any Participant or Beneficiary may be entitled will be determined according to the provisions of the Plan in effect on such Participant's Severance from Service Date. In order to receive any Plan benefits, a Participant must furnish the Plan Administrator with such information that may reasonably be required for purposes of proper Plan administration.

#### 14.03 Assignment or Alienation of Benefits

Except pursuant to a domestic relations order, any benefit payable under the Plan is not subject in any manner to assignment, alienation, anticipation, sale, transfer, pledge, garnishment, encumbrance, lien or charge. Any attempt to cause any benefit to be so subjected will not be recognized except to any extent required by law.

Subject to the procedures established by the Salary Savings Plan Committee pursuant to the provisions of this Plan, benefits may be paid from the nonforfeitable balance of a Participant's Accounts in accordance with a domestic relations order as defined in Section 414(p)(1)(A)(i) of the Internal Revenue Code without regard to whether the Participant has attained the "earliest retirement age," as defined in Section 414(p) of the Code.

#### 14.04 Merger of Plans

In the event of any merger or consolidation of the Plan with, or transfer of assets or liabilities of the Plan to, any other retirement plan, Participants or Beneficiaries will, if such other plan then terminates, be entitled to receive a benefit immediately after the merger, consolidation, or transfer that equals or is greater than the benefit to which they would have been entitled immediately before the merger, consolidation or transfer if the Plan had then terminated

#### 14.05 Substitute Payee

If a Participant or Beneficiary entitled to receive any distribution from the Plan is a minor, or is, in the judgement of the Plan Administrator, legally, physically, or mentally incapable of personally receiving any distribution, the Plan Administrator may make distributions to a legally appointed guardian, or to such other person, persons, or institutions as it may judge to be then maintaining or to have custody of the payee.

14.06 Governing Law

The Plan will be construed and interpreted in accordance with the laws of the State of California, to the extent federal laws do not control.

14.07 Effect of Invalidation of Specific Provision

If any provision of the Plan is held to be invalid or unenforceable, the other Plan provisions will not be affected, but will be applied as if the invalid or unenforceable provision had not been included in the Plan.

14.08 Conflicts with Applicable Law

Notwithstanding any provision of the Plan to the contrary, in the event that any provision of the Plan conflicts with applicable laws or regulations, or as they may be amended from time to time, the Plan shall be deemed to have been amended to be in conformity with said laws or regulations.

IN WITNESS WHEREOF, the County of San Bernardino has adopted the amended Plan and caused this instrument to be executed by its officers duly authorized, this 1st day of October, 2002.

COUNTY OF SAN BERNARDINO

BY:

\_\_\_\_\_  
Chair, Board of Supervisors



## **APPENDIX A**

### **RULES AND REGULATIONS OF THE PARTICIPANT LOAN PROGRAM OF THE SAN BERNARDINO COUNTY 401(k) SALARY SAVINGS PLAN**

#### **SECTION 1: ADMINISTRATION**

The Plan Administrator of the San Bernardino County 401(k) Salary Savings Plan administers this loan program, with day-to-day operations handled by the staff of the Employee Benefits and Services Division of the Human Resources Department and the Plan Record Keeper. Inquiries regarding loans should be directed to:

1. The Plan Recordkeeper
2. Human Resources Department  
Employee Benefits and Services Division  
157 West 5<sup>th</sup> Street, 1<sup>st</sup> Floor  
San Bernardino, California 92415-0440  
(909) 387-6098

#### **SECTION 2: LOAN PROCEDURES - GENERAL**

A Participant requesting a loan shall make written application for it on forms approved by the Plan Administrator, which shall be available upon request from the Plan Recordkeeper. The borrower shall also provide a completed Promissory Note in the prescribed form and any other written loan documentation that the Plan Administrator may require regarding security for the loan, including a legally binding waiver of any future claims that the Participant or any current or future spouse or family member of the Participant may have. The borrower shall also provide, upon request, any evidence that may be needed to demonstrate the borrower's qualification for the loan and the receipt of adequate information concerning the loan.

Upon making application for a loan, the Participant shall acknowledge and consent that any payment made by the Plan pursuant to this Section constitutes a bona fide loan and not a distribution of money in his or her account.

#### **SECTION 3: LOAN APPLICATION PROCEDURE**

- A. Obtain and complete a loan application on forms provided by the Plan Recordkeeper.
- B. Submit the completed loan application to the Employee Benefits and Services Division, Human Resources Department.

- C. The employee Benefits and Services Division will review all loan applications for completeness. Incomplete applications will be returned to the applicant for completion.
- D. Employee Benefits and Services will forward completed documents to the Plan Recordkeeper for processing.
- E. The Plan Recordkeeper normally processes loans within 5 to 10 working days. Participants may request that a "RUSH" be placed on the loan processing for an additional fee determined by the Plan Recordkeeper
- F. Loan payments will be deducted from the Participant's pay amount on a bi-weekly basis beginning as soon as practical following the Participant's receipt of the loan proceeds.

#### **SECTION 4: LOAN ORIGATION FEE**

A loan origination charge will be deducted from each borrower's Account at the time a loan is made to cover the Plan's expenses in establishing and monitoring the loan. This amount is subject to change upon the recommendation of the Plan Administrator and the approval of the Salary Savings Plan Committee.

#### **SECTION 5: ELIGIBILITY**

- A. Eligible Individuals. A loan from the Program shall be made available to a Participant who:
  - 1. has participated in the Plan by making Compensation Reduction Contributions to the Plan for at least 26 pay periods or more immediately prior to the time the loan request is made, and is making Compensation Reduction Contributions to the Plan at the time the loan is made;
  - 2. has not more than one outstanding loan at the time an additional loan will be effective except that additional loans may be approved by the Plan Administrator if the purpose of the loan request is due to an immediate and heavy financial need of the Participant pursuant to Section 7.01 of the Plan;
  - 3. has not received a distribution from the Plan as a result of default in the repayment of a previous loan under this Program within the five-year period which commenced on the date such previous loan was approved; and
  - 4. makes written application for a loan in the form and manner required by the Plan Administrator.
- B. Maximum Amounts. The amount of a Participant's loan from the Program (when added to the outstanding balances of all other Participant's loans from the Plan) shall not exceed the lesser of:
  - 1. \$50,000; or

2. one-half of the Participant's vested interest in his/her Account as of the Valuation Date preceding the date upon which the Participant's loan application is made, less the community property interest of the Alternate payee when the Plan has notice of pending dissolution or separation.
- C. Minimum Amount. Each loan from the Plan shall be in an amount that is not less than \$1,000.
- D. Loan Limitations.
1. The number of outstanding loans to a single Participant is limited to no more than two loans except that additional loans may be approved if the purpose of the loan request is due to an immediate and heavy financial need of the Participant pursuant to Section 7.01.
  2. Limitations on Types of Loans. Subject to the limitations on the amount of any loan, loans will be approved if the loan proceeds are to be used for any purpose.
  3. Limitations on Amounts of Loans.
    - a. The minimum amount of any loan is \$1,000.
    - b. The maximum amount of any loan is the lesser of \$50,000 or 50 percent of the vested interest of the Participant in the Plan. The \$50,000 maximum amount will be reduced by the Participant's highest outstanding loan balance in the previous 12 months, even if amounts have been repaid.
    - c. The balance of all outstanding loans to a single Participant may not exceed \$50,000 or 50 percent of the Participant's vested interest in the Plan.

## **SECTION 6: BASIS FOR GRANTING OR DENYING LOANS**

- A. Basis for Approvals. Loans are available to all actively employed Participants without regard to any individual's race, color, religion, sex, age, or national origin. Each application will be reviewed on a nondiscriminatory basis, but will be assessed on the applicant's ability to repay the loan and the terms of the loan.
- B. Each loan from the Plan shall not be assignable or assumable and shall be subject to any limitations or restrictions made necessary by any domestic relations order relating to the Participant's Account or the claims or potential claims of a divorced or separated spouse.

## **SECTION 7: INTEREST**

- A. The interest rate shall be the current prime rate as identified by the Plan Recordkeeper. Interest shall be compounded annually.
- B. Interest payments made by a Participant in connection with the repayments of a loan under the Program shall be credited to the Participant's Account in the Plan.

## **SECTION 8: COLLATERAL OR OTHER SECURITY FOR THE LOAN**

All loans must be adequately secured. No more than 50 percent of the present value of a Participant's vested interest in the Plan may be considered by the Plan as security for the outstanding balance of all Plan loans made to the Participant.

- 1. Security Required. No loan shall be made under this Program unless the Participant executes and delivers to the Plan Administrator an acceptable assignment of the Participant's claim against their vested account balance in the Plan for an amount equal to the outstanding balance of the loan plus accrued interest as collateral to secure repayment of the loan plus accrued interest and any related expenses, including attorney's fees and other collection charges.
  - 2. Surviving Spouse Waiver. An application for a loan shall not be accepted unless the following Surviving Spouse Waiver requirements are met:
    - a. Not more than 90 days before the date of the loan, the Participant and the Participant's spouse, if any, must file a written consent to the assignment of the future benefit claim as security for the loan and to the possible forfeiture of that claim in the event of a default and acknowledging the potential impact on their benefits in the form prescribed by the Plan and witnessed by a Notary Public, or a Plan representative designated by the Plan Administrator for this purpose; or
    - b. Not more than 90 days before the date of the loan, the Participant must file a statement, on the prescribed form and witnessed by a Notary Public or designated Plan representative, consenting to the possible forfeiture of the future benefit claim in the event of a default and representing that he or she is (and by the date of the loan will continue to be):
      - (1) not married;
      - (2) legally separated; or
      - (3) married but unable to locate his or her spouse.
- and provides supporting documentation as required by the Plan Administrator.

3. Effect of Waiver. A Surviving Spouse Waiver that is valid under these rules at the time it is given will be treated as valid and binding consent to the Plan Administrator's later enforcement of the assignment of the Participant's benefit claim, regardless of any change in the Participant's marital status.

## **SECTION 9: REPAYMENT TERMS**

- A. Loan Effective Date. Each loan will be made effective as of the first day of a Pay Period.
- B. Term of Loan and Installments. Subject to Subsection C below, loans must be repaid in 60 equal monthly installments beginning approximately 60 days following the date the Participant requested the loan. The Plan will provide the Participant with an amortization schedule for the term of the loan.
- C. Principal Resident Loans. Notwithstanding anything herein to the contrary, a loan used to acquire, construct, reconstruct, or substantially rehabilitate any dwelling unit which, within a reasonable time is to be used (determined at the time the loan is made) as a principal residence of the Participant or a member of the family (within the meaning of Section 267(c)(4) of the Internal Revenue Code) of the Participant may provide for monthly repayment in equal installments over a period no longer than 15 years.
- D. Prepayment/Unbalanced Payments. Early payment of scheduled payments, or prepayment of outstanding principal and accrued interest, is permitted at any time without penalty. When a loan is established, an appropriate bi-weekly payment amount will be determined for the duration of the loan. When a payment is received that does not equal this amount, or is not a multiple of this amount, the payment will be applied first to principal due, with the remaining balance applied to interest. Any necessary adjustments to the payment schedule, created by either accelerated principal amounts or too little principal being remitted, will be made by the Plan Administrator or Plan Record Keeper as required.
- E. Payments During Military Service. Participants enlisted or called up to active duty in the Armed Forces of the United States (whether such enlistment is voluntary or as a result of being drafted under any national conscription law) shall have no obligation to make payments during the duration of such service provided it is understood that:
  - a. during such service, interest shall continue to accrue on the balance of the loan; and
  - b. the repayment method of the outstanding loan will not be extended by the length of military service. The Participant must repay the loan within 5 or 15 years, whichever is appropriate.

## **SECTION 10: DEFAULT AND COLLECTION PROCEDURES**

- A. A loan is in default when a scheduled installment payment has not been received by the last day of the calendar quarter following the calendar quarter in which the last scheduled installment payment was due. If payment has not been made within 15 days of the installment due date, the Employee Benefits and Services Division will notify the Participant in writing that the loan will be in default at the end of the applicable calendar quarter following the calendar quarter in which it was due. If payment is not received within such stipulated time period, the following will take place:
1. The entire unpaid balance on a defaulted loan will be considered to be in default as of the date the last payment was due.
  2. At the discretion of the Plan Administrator, exercised in a uniform and nondiscriminatory manner, the loan will be renegotiated and payments will be made through payroll withholding. If the loan is not renegotiated in a manner acceptable to the Plan Administrator, if permitted in the Plan, the loan will be deemed an in-service withdrawal. Such withdrawal will be subject to a personal income and possible penalty taxes. Form 1099R will be timely issued to the Participant and the IRS showing such withdrawal.
  3. If the Participant fails to make provisions for repayment reasonably acceptable to the Plan Administrator, at the election of the Plan Administrator, exercised in a uniform and nondiscriminatory manner, the remaining principal and interest on the loan shall be declared due and payable as of the date the last payment was due.
  4. The amount of any uncured default will be considered as having been received in a taxable event, subject to personal income and penalty taxes. Such tax consequences do not affect the Participant's obligation to repay the loan. Form 1099R will be timely issued to the Participant and the IRS; however, the loan will not be charged against the Participant's vested Account balance until he or she terminate service, retires, dies, becomes disabled, or reaches the earliest date distribution is permitted under the Plan.
  5. To the extent necessary, any other collateral pledged as additional security will be foreclosed upon.
- B. Exception to Default. A Participant shall not be considered in Default if he or she meets the requirements of Section 9E.
- C. Litigation. The Plan Administrator may sue to collect amounts due on a loan.

**SECTION 11: DEATH OF BORROWER**

If a Participant dies before repaying a loan in full, the obligation to repay any amount outstanding shall not terminate as of the date of death. The outstanding principal amount of the loan will be offset against the Participant's Account balance in determining the amount of any qualified benefit payable to the Participant's Beneficiary(ies).